

**OPINION
49-154**

October 24, 1949 (OPINION)

OFFICERS

RE: Sickness

Re: Section 44-0201 of 1947 Supplement

Your letter of October 20th, re the above, has been received and referred to my desk.

Your letter is short and is as follows:

In case an official of a county office is ill for over sixty days and unable to perform the duties of his office how long will the county have to pay him his monthly salary? Will this go on indefinitely or will the officer still retain his title and remuneration?"

To answer your question we must construe the above section.

It is our opinion that, since the failure to perform the duties of his office is caused by sickness, there is no vacancy in his office. He is still the duly elected, qualified, and acting officer, even though the action involved is performed by deputy. Being such officer, he is entitled to the emoluments of his office, that is, he is entitled to his monthly salary while disabled by sickness. But, of course, such right terminates at the end of the term for which he was elected.

It is our opinion that the last sentence of subdivision 5 of said section applies only when the officer is absent from his county by reason of his service in the army, navy or marine corps of the United States, since while so absent he will be receiving compensation for such service from the United States.

WALLACE E. WARNER

Attorney General